

JUN 16 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

MICHELLE READ,

Plaintiff - Appellant,

v.

OFFICER BEGBIE; SERGEANT
CARDELLA; CITY OF SPARKS,

Defendants - Appellees.

No. 02-15270

D.C. No. CV-00-00330-DWH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
David Warner Hagen, District Judge, Presiding

Argued and Submitted March 12, 2003
San Francisco, California

Before: LEAVY, RYMER, and PAEZ, Circuit Judges.

Michelle Read appeals the district court's grant of summary judgment in favor of the defendants. She alleges that in detaining her, Defendants Begbie and

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Cardella used excessive force in violation of the Fourth Amendment.¹ The district court determined that the officers were entitled summary judgment on the basis of qualified immunity. In its qualified immunity analysis, the court applied the first prong of the two-prong test articulated in *Saucier v. Katz*² and concluded that, on the evidence presented, a trier of fact could not find that the officers used excessive force.

We have jurisdiction under 28 U.S.C. § 1291. We review *de novo*, and we reverse and remand.

I.

Resolving all disputed facts in Read's favor, as we must when reviewing a motion for summary judgment, *Jackson v. Bremerton*, 268 F.3d 646, 650 (9th Cir. 2001), we conclude that a jury could find excessive force was used when Sergeant Cardella tripped Read, causing her to fall, and subsequently picked her up by the handcuffs. On Read's version of the facts, Read states that she believed the officer

¹ In Read's Amended Complaint, she also alleged that her approximately 45-minute detention in the patrol car following the events in the house constituted an unlawful seizure under the Fourth Amendment. The district court granted summary judgment to Defendants on all of Read's federal claims. However, because Read failed to raise this issue on appeal, we consider it waived. See *Zimmerman v. Bishop Estate*, 25 F.3d 784, 788–89 (9th Cir. 1994).

² 533 U.S. 194 (2000).

had indicated that it was okay for her to enter the house to retrieve her son and did not hear any of the officers order her to stop. After she entered the house, Cardella came in behind her, grabbed her by the wrists, and moved her to the couch, all the while failing to inform her of the reason for his actions. Although Read states that she was not resisting, Cardella then picked her up off the couch, moved her to the center of the room, moved her hands behind her back and tripped her to the floor, causing her to land on her head. After handcuffing her wrists, Cardella pulled up on the middle of the cuffs to force Read to stand, injuring her wrists in the process.

Balancing the nature and quality of the intrusion on Read's Fourth Amendment interests against the countervailing governmental interests at stake, we conclude that, if a jury were to believe Read's version of the events, the officers had no need to use force. *Headwaters Forest Def. v. County of Humboldt*, 240 F.3d 1185, 1199 (9th Cir. 2001) ("[W]here there is no need for force, *any* force used is constitutionally unreasonable"), *vacated by* 122 S. Ct. 24, and *aff'd on remand*, 276 F.3d 1125 (9th Cir. 2002). Read's alleged unlawful conduct was relatively minor and she did not pose an immediate threat to the safety of the officers or others. *Compare Santos v. Gates*, 287 F.3d 846, 854 (9th Cir. 2002) (stating that where plaintiff was passive at the time the officers arrived on the scene, plaintiff's demeanor undercut any possible government interest in resorting

to force) *with Jackson*, 268 F.3d at 653 (holding that a “melee” of thirty to fifty agitated individuals who outnumbered the officers and engaged them in verbal and physical altercations provided justification for use of force). Further, according to Read’s version of the events, she was not resisting, struggling, or attempting to flee the scene. *See Graham v. O’Connor*, 490 U.S. 386, 396 (1989).

II.

A reasonable officer would have known that his conduct, as described by Read, was unlawful, as it was clearly established in November 1999 that the use of force on a subdued arrestee was unreasonable. *See Mendoza v. Block*, 27 F.3d 1357, 1362 (9th Cir. 1994) (holding that “no particularized case law is necessary for a deputy to know that excessive force has been used when a deputy sics a canine on a handcuffed arrestee who has fully surrendered and is completely under control” and that this “analysis applies to any arrest situation where force is used”); *Watkins v. City of Oakland*, 145 F.3d 1087, 1090 (9th Cir. 1998) (holding that defendant was “obviously helpless” before he was handcuffed such that continued encouragement of canine attack constituted excessive force). Because a jury could find that Read had been subdued and was under control when Sergeant Cardella caused her to fall to the ground and subsequently picked her up by the

handcuffs, a reasonable officer would have known that his use of force was unlawful.

III.

Read's Fourth Amendment excessive force claim survives *Saucier's* two - prong test for qualified immunity. Accordingly, we reverse the district court's judgment and remand for further proceedings. Because the district court relied on 28 U.S.C. § 1367(c)(3) in declining to exercise supplemental jurisdiction over Read's state law claims, we vacate the district court's dismissal order and direct the district court to reinstate Plaintiff's state law claims.³

REVERSED and REMANDED.

³ The district court did not specifically address Read's claim with respect to the City of Sparks; it simply granted summary judgment on all of Read's federal claims. It appears that the district court concluded that the City of Sparks could not be held liable under 42 U.S.C. § 1983 where no injury or constitutional violation had occurred. *See Jackson v. Bremerton*, 268 F.3d 646, 654–55 (9th Cir. 2001). In light of our disposition, we also reinstate this claim so that the district court may address it on remand.